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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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SEP 18 2000

In the Matter of

Rural Telephone Company  
Self-Certification of  
Valor Telecommunications  
Southwest, LLC

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-45

DA 00-1882

**Comments of Iowa Telecommunications Services, Inc.**

Iowa Telecommunications Services, Inc. ("Iowa Telecom"), by its attorneys, submits the following comments concerning the rural telephone company self-certification submitted by Valor Telecommunications Southwest, LLC on behalf of Valor Telecommunications of New Mexico and Valor Telecommunications of Texas (collectively, Valor) in the proceeding referenced above. As discussed below, based on Valor's Rural Self-Certification, it qualifies for rural telephone company (RTC) status pursuant to Section 3(37)(D) of the Communications Act of 1934, as amended (the Act).

**I. Background**

Iowa Telecom is a rural telephone company serving territory in the state of Iowa. It commenced operations on July 1, 2000 following the purchase of the Iowa local exchange properties operated by GTE Midwest, Inc. Like Valor, Iowa Telecom has self-certified as an RTC. Iowa Telecom qualifies for RTC status pursuant to, Sections 3(37)(A), (C) and (D) of the Act and consequently has an interest in this proceeding.

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## **II. Argument**

### **A. Valor Qualifies As A Rural Telephone Company Under Section 3(37)(D) of the Act**

Valor qualifies as a “rural telephone company” in its Texas and New Mexico study areas pursuant to, Section 3(37)(D) of the Act (47 U.S.C. §153(37)(D), hereinafter “criterion (D)”). In its “Petition to Reject Rural Telephone Company Self-Certification” (Petition to Reject), Western Wireless Corporation (Western) misreads criterion (D) claiming that it cannot be applied to Valor because (1) Valor was not a local exchange carrier on the date of the enactment of the ’96 Telecom Act and (2) GTE, its predecessor local exchange carrier, could not qualify in its Texas and New Mexico study area under criterion (D).<sup>1</sup> As shown below, Western’s reading of criterion (D) is inconsistent with its plain meaning, congressional intent, and, if adopted by the Commission, would produce a result inconsistent with statutory purpose and the public interest.

#### **(1) Criterion (D) Should be Construed to “Grandfather” the Population Statistics of a “Community” Rather Than Any Particular Local Exchange Carrier**

On its face, criterion (D) must be construed to apply to all local exchange carriers whether or not they were operating on the date of enactment. Under this construction, the limiting phrase “on the date of the enactment...” in criterion (D) should be construed to effectively “grandfather” the population characteristics of the community. A local exchange carrier demonstrating RTC status under criterion (D) would provide evidence that less than 15 percent of the access lines it operates serve communities with a

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<sup>1</sup> Petition to Reject at 7-8. Western concedes that a local exchange carrier purchasing local exchange property that was considered rural pursuant to criterion (D) when held

population, as measured by 1990 Census Data (the most recent available data prior to the enactment of the '96 Act), in communities of more than 50,000.

Apparently, the Commission has already determined that this is the correct approach. In the *Tenth Report and Order*, CC Docket No. 96-45, the Commission interpreted the phrase "communities of more than 50,000" contained in criterion (D) "to refer to legally incorporated localities, consolidated cities, and census-designated places with populations of more than 50,000 according to Census Bureau statistics."<sup>2</sup> In that same decision, the Commission went on to state "that, when a carrier files for rural certification under criterion (D), it must include in its certifying letter a list of all communities of more than 50,000 to which it provides service, the population of those communities, the number of access lines serving those communities, and the total number of access lines the carrier serves."<sup>3</sup> It appears that further elaboration concerning the specific vintage of the population data was not necessary because at the time of the Commission's decision the most recent data available (from the 1990 Census) was of the appropriate vintage and, thus, consistent with the Commission's interpretation of criterion (D).

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by the selling local exchange carrier would be considered rural territory under criterion (D) when held by a subsequent owner.

<sup>2</sup> *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, CC Docket 96-45, FCC 99-304, 14 FCC Rcd 20156, 20352, para. 444 (November 2, 1999).

<sup>3</sup> *Id.* at 20358, para. 457.

**(2) The “Grandfathering” of Population Statistics Pursuant to Criterion (D) is Consistent With Congressional Intent**

Congress has expressed its intent to provide RTC status to carriers, like Valor, that provide service to “rural areas and that while [such carrier’s] service areas may not be exclusively rural, they are overwhelmingly so.”<sup>4</sup> Valor’s Texas study area contains 197 offices each serving an average of approximately 1600 access lines. If the single largest central office location, Texarkana, Texas, is removed, Valor’s average drops to approximately 1300 access lines per central office.<sup>5</sup> By contrast the a typical Bell Operating Company central office serves approximately 10,800 access lines.<sup>6</sup>

Moreover, with criterion (D) Congress identified specific characteristics that it concluded were deserving of RTC status because of the relatively small number of access lines (<15%) serving larger communities (>50,000). Consumers served by local exchange carriers meeting criterion (D) today still have the same needs for universally available, affordable services that Congress sought to support regardless of when those carriers commenced operations. It is further apparent that Congress intended that new carriers qualify under all prongs of the RTC definition considering that in no portion of the definition is RTC status restricted to “incumbent local exchange carriers” as defined in Section 252(h). Rather, criterion (D) and the other prongs of the definition, apply to “local exchange carrier operating entities” not just incumbents.<sup>7</sup>

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<sup>4</sup> H.R. REP NO. 104-204 at p. 126; reprinted in 1996 U.S.S.C.A.N. 10.

<sup>5</sup> See *Valor Rural Self-Certification Letter*, filed June 27, 2000.

<sup>6</sup> See Notice of *Ex Parte* Presentation in CC Docket Nos. 94-1, 96-45, 99-249, and 96-262, filed by Valor Communications, Inc., March 27, 2000.

<sup>7</sup> 47 U.S.C. §153(3)(37). While “local exchange operating entity” is not defined in the Act, the definition of “local exchange carrier” makes clear that it applies to providers

Iowa Telecom’s reading of criterion (D) is also consistent with the pro-competitive thrust of the ’96 Act because it expands the protections afforded by RTC status to new competitive local exchange carriers serving rural markets. Most obviously, Congress intended the ’96 Telecom Act to promote competition improving service to all Americans including service in the rural areas.<sup>8</sup> In furtherance of that stated intent, Congress promoted competitive entry in rural areas while at the same time establishing support mechanisms in rural areas for universally available, affordable telecommunications services provided by all “local exchange carriers operating entities”, both new carriers and incumbents. The need for such universal service support in rural areas did not cease on the date of enactment of the ’96 Act. It is as relevant today as it was then.

By contrast, Western’s reading of criterion (D) ignores the expressed intent of Congress and, therefore, fails the well settled rule of statutory construction requiring that the plain language of a statute be applied in a manner that produces results that are consistent with the clear intent of Congress.<sup>9</sup> First, as indicated above, Western’s construction would limit the reach of criterion (D) to incumbent local exchange carriers

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of local exchange and exchange access service including carriers commencing operations after the date of enactment of the Act. 47 U.S.C. §153(3)(26).

<sup>8</sup>The 1996 Act mandates that “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-] cost areas, should have access to telecommunications and information services . . . .” 47 U.S.C. § 254(b)(3).

<sup>9</sup> *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1898)(“it is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers . . . .”); *see also New York State Commission On Cable Television v. FCC*, 571 F.2d 95, 98 (2nd Cir. 1977)(“[m]ere incantation of the plain meaning rule, without placing the language to be construed in its proper framework, cannot substitute for a meaningful analysis.”).

in operation on February 8, 1996 thereby denying universal service support for the customers of all rural local exchange carriers that began operations since the '96 Act was adopted.<sup>10</sup>

Moreover, Western's literal reading of criterion (D) also leads to results clearly beyond what Congress intended, once again failing rules of statutory construction.<sup>11</sup> For example, under Western's literal reading of criterion (D) a carrier with less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the '96 Act qualifies under criterion (D). If that same carrier, on the day following enactment of the '96 Telecom Act extended its operations so 90% of its access lines were located in communities of more than 50,000, Western's interpretation would permit that carrier to still qualify as an RTC. Such a result is contrary to the expression of Congress that the definition is designed to identify local exchange carriers that are "overwhelmingly" rural.<sup>12</sup> By contrast, Iowa Telecom's construction of criterion (D) would "grandfather" the characteristics of what is a rural telephone service area, *i.e.*, population statistics, which are far less volatile than the changing service territories of local exchange carriers. Thus, Iowa Telecom's statutory construction prevents the absurd results made possible by Western's interpretation of criterion (D).

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<sup>10</sup> Not only does Western's construction ignore Congress' intent but it also fails a second tenet of statutory construction by rendering criterion (D) inoperative with respect to local exchange carriers created after February 8, 1996. *See gen. Mountain States Telephone & Telegraph Co. v. Pueblo of Santa Ana*, 472 U.S. 237 (1985) (discussing the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative.").

<sup>11</sup> *New York State Commission On Cable Television v. FCC*, at 98 ("we must remember Judge Learned Hand's stricture that 'there is no surer way to misread any document than to read it literally. . .'" (citation omitted).)

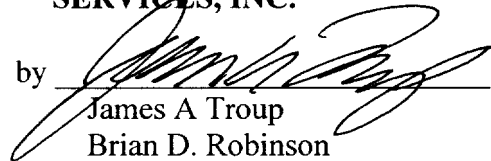
<sup>12</sup> *See infra* note 4.

For the reasons set forth above, the FCC should conclude that Valor is a rural telephone company pursuant to Section 3(37)(D) of the Act.

Respectfully submitted,

**IOWA TELECOMMUNICATIONS  
SERVICES, INC.**

by

A handwritten signature in black ink, appearing to read "James A. Troup", is written over a horizontal line.

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